

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JAMES T. BURKE.

Plaintiff,

V.

File No. 1:16-cv-00052-jgm-jmc

**LISA MENARD, Commissioner,
Vermont Department of Corrections,
RALPH CHERRY, Superintendent,
N.L.C.F. - Baldwin, MI.**

Defendants.

ORDER

The Magistrate Judge's Report and Recommendation was filed June 1, 2016. (Doc. 14.) After de novo review and absent objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1).

Defendant Lisa Menard's Motion to Dismiss for failure to state a claim upon which relief can be granted (Doc. 13) is GRANTED. Leave to amend the Complaint is DENIED because Plaintiff's claims fail in substance and any amendment would be futile. The Court refrains from exercising supplemental jurisdiction over any potential state law claims raised in Plaintiff's Complaint.

It is hereby ORDERED that, on or before 20 days from the date hereof, Plaintiff shall file proof of service of the Complaint as to Defendant Ralph Cherry, Superintendent, North Lake Correctional Facility, Baldwin, Michigan. Failure to do so will result in the dismissal without prejudice of all claims against him.

It is further certified that any appeal taken in forma pauperis from this Order would not be taken in good faith because such an appeal would be frivolous. See 28 U.S.C. § 1915(a)(3).

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 6th day of July, 2016.

/s/ J. Garvan Murtha
Honorable J. Garvan Murtha
United States District Judge